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7

8 **IN THE UNITED STATES DISTRICT COURT**
 9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

10 ASA FARMS, INC., a California corporation and) Case No. C08-00122JF
 11 BRAGA RANCH)
)

12 Plaintiffs,)
 13)
 14 v.)
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DEclaration of EFFIE F.
 ANASTASSIOU IN SUPPORT OF
 OCEANO PACKING COMPANY, LLC'S
 MOTION FOR INTERVENTION

DATE: April 4, 2008
 TIME: 9:00 a.m.
 PLACE: Courtroom 3, 5th Floor
 JUDGE: Judge Jeremy Fogel

FRESH 'N HEALTHY, INC., a Delaware corporation, MARK WILLIAMS, an individual; JACK PARSON, an individual; STEVEN CINELLI, an individual; CHAD HAGEN, an individual, SANTOS MARTINEZ, an individual; DON BEAM, an individual; DARRYL NICHOLSON, an individual; RICHARD MAY, an individual; THOMAS COLOGNA, an individual; PRESTWICK PARTNERS, LLC, a California limited liability company; SOLSTICE VENTURE PARTNERS, LLC, a business entity form unknown; VFINANCE INVESTMENTS, a business entity form unknown; FMP VINEYARD, LLC, a New Mexico limited liability company; BUTTONWOOD OPTION, LLC, a business entity form unknown; DW, LLC, a business entity form unknown; M SOLAZZO TRUST 2002; P. SOLAZZO 1998; GIBBONS FAMILY TRUST; BIXLER TRUST; STEIGERWALD TRUST and CARTER TRUST, COMERICA BANK and DOES 2 through 50, inclusive,

Defendants

1 I, EFFIE F. ANASTASSIOU, declare under penalty of perjury that the following is true and
 2 correct:

3 1. I am the attorney who represents the Intervening Plaintiff OCEANO PACKING CO, LLC
 4 (“INTERVENING PLAINTIFF” or “OCEANO”) in the instant matter. As such, I have personal
 5 knowledge of the following facts to which I could and would competently testify if called as a witness.

6 2. Attached hereto as **Exhibit “A”** and incorporated by reference is OCEANO’s Proposed
 7 Complaint-In-Intervention.

8 3. As of the date of the filing of this motion, OCEANO has received no written response to
 9 its February 8, 2008 Letter attached as Exhibit “B” to OCEANO’s Proposed Complaint-In-Intervention,
 10 or assurances by the parties who are Plaintiffs or Defendants in the action in which OCEANO is seeking
 11 to intervene (the “ASA Complaint”), that the interests of OCEANO will be protected in the PACA trust
 12 assets which are the subject of the Preliminary Injunction, entered on January 29, 2008 (the “Preliminary
 13 Injunction”), attached as Exhibit “A” to OCEANO’s Proposed Complaint-In-Intervention.

14 4. OCEANO was never notified of the Stipulation to Modify Preliminary Injunction (the
 15 “Stipulation to Modify”), filed on February 25, 2008 by Defendant FRESH & HEALTHY, INC.
 16 (“FRESH”), Defendant COMERICA BANK, and counsel to Plaintiffs in the ASA Complaint which is
 17 attached as Exhibit “C” to OCEANO’s Proposed Complaint-In-Intervention, nor was OCEANO consulted
 18 in any manner concerning the Stipulation to Modify. OCEANO only discovered that the Stipulation to
 19 Modify had been entered into through its monitoring of Court filings on PACER.

20 5. On information and belief, Defendant COMERICA may be selling the assets of FRESH
 21 for *less* than fair market value to one or more of the RESPONSIBLY CONNECTED PARTIES (as defined
 22 in Paragraph 27 of OCEANO’s Proposed Complaint-In-Intervention) to the harm and detriment of
 23 OCEANO and other creditors of FRESH.

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 28 .

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
2 and correct, except that portion which I stated based on my information and belief, and as to those portions
3 I believe them to be true.

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6 Executed this 27th day of February, 2008, at Salinas, California.

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/s/ 
EFFIE F. ANASTASSIOU
Declarant

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EXHIBIT A

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Attorneys for OCEANO PACKING CO., LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

ASA FARMS, INC., a California corporation and) Case No. C08-00122JF
Braga Ranch)

Plaintiffs,) **OCEANO PACKING CO., LLC's**
) **COMPLAINT-IN-INTERVENTION**

v.

FRESH 'N HEALTHY, INC., a Delaware corporation, MARK WILLIAMS, an individual; JACK PARSON, an individual; STEVEN CINELLI, an individual; CHAD HAGEN, an individual, SANTOS MARTINEZ, an individual; DON BEAM, an individual; DARRYL NICHOLSON, an individual; RICHARD MAY, an individual; THOMAS COLOGNA, an individual; PRESTWICK PARTNERS, LLC, a California limited liability company; SOLSTICE VENTURE PARTNERS, LLC, a business entity form unknown; VFINANCE INVESTMENTS, a business entity form unknown; FMP VINEYARD, LLC, a New Mexico limited liability company; BUTTONWOOD OPTION, LLC, a business entity form unknown; DW, LLC, a business entity form unknown; M SOLAZZO TRUST 2002; P. SOLAZZO 1998; GIBBONS FAMILY TRUST; BIXLER TRUST; STEIGERWALD TRUST and CARTER TRUST, COMERICA BANK and DOES 2 through 50, inclusive.

Defendants

OCEANO PACKING CO. LLC., a California limited liability company;

Intervening Plaintiff,

v.

FRESH 'N HEALTHY, INC., a Delaware corporation; MARK WILLIAMS, an individual; JACK PARSON, an individual; STEVEN CINELLI, an individual; CHAD HAGEN, an individual; SANTOS MARTINEZ, an individual; DON BEAM, an individual; DARRYL NICHOLSON, an individual; RICHARD MAY, an individual; THOMAS COLOGNA, an individual; PRESTWICK PARTNERS, LLC, a California limited liability company; SOLSTICE VENTURE PARTNERS, LLC, a California limited liability company; VFINANCE INVESTMENTS, a business entity form unknown; FMP VINEYARD, LLC, a New Mexico limited liability company; BUTTONWOOD OPTION, LLC, a business entity form unknown; DW, LLC, a business entity form unknown; M SOLAZZO TRUST 2002; P. SOLAZZO 1998; GIBBONS FAMILY TRUST; BIXLER TRUST; STEIGERWALD TRUST; CARTER TRUST; and COMERICA BANK, a Texas Corporation;

Defendants.

COMPLAINT FOR:

1. BREACH OF WRITTEN CONTRACTS;
2. ACCOUNTS STATED;
3. OPEN BOOK ACCOUNT;
4. ENFORCEMENT OF STATUTORY TRUST PROVISIONS OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT ("PACA") [7 U.S.C. §§499e, et seq.] AND DISGORGEMENT;
5. VIOLATION OF PACA: FAILURE TO ACCOUNT AND PAY PROMPTLY;
6. CONVERSION;
7. UNJUST ENRICHMENT;
8. CONSTRUCTIVE TRUST/ DISGORGEMENT; and
9. DECLARATORY RELIEF.

DEMAND FOR JURY TRIAL

Intervening Plaintiff OCEANO PACKING CO, LLC (“INTERVENING PLAINTIFF” or “OCEANO”) for its complaint in intervention against defendants alleges:

JURISDICTION AND VENUE

1. Jurisdiction is based on Section 5(c)(5) of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e et seq. (hereafter, the “PACA”), and 28 U.S.C. §1331. This Court has jurisdiction over the remaining causes of action which do not arise under PACA pursuant to 28 U.S.C. §1367(a) because said causes of action form part of the same case or controversy.

2. Venue in this District is based on 28 U.S.C. §1391 in that: (a) one or more Defendants' residence or principal place of business is in this District; and (b) a substantial part of the events or omissions giving rise to OCEANO's claim occurred in this District.

DESCRIPTION OF PARTIES

3. OCEANO is now and at all relevant times material herein was a California limited liability company, with its principal business office in the County of San Luis Obispo, State of California.

4. On information and belief, Defendant FRESH 'N HEALTHY, INC. (hereinafter, "FRESH"), is and has at all relevant times herein been, a Delaware corporation organized and doing business under the laws of the State of California, with its principal business office formerly located in Hollister, California. On information and belief, at the end of 2007, Defendant FRESH closed down its offices and currently has no business office.

5. On information and belief, Defendant MARK WILLIAMS (hereinafter, "WILLIAMS"), an individual, was at all relevant times herein, a resident of Monterey County, California, and is and has at all relevant times herein been, an officer, director and/or shareholder of FRESH.

6. On information and belief, Defendant JACK PARSON (hereinafter, "PARSON"), an individual, is a resident of Monterey County, California and is and has at all relevant times herein been, an officer, director and/or shareholder of FRESH.

7. On information and belief, Defendant STEVEN CINELLI (hereinafter, "CINELLI"), an individual, is and has at all relevant times herein been a resident of Santa Clara County, California, and has at all relevant times herein been, an officer, director and/or shareholder of FRESH.

8. On information and belief, Defendant CHAD HAGEN (hereinafter, "HAGEN"), an individual, is and has at all relevant times herein been, an officer, director and/or shareholder of FRESH.

9. On information and belief, Defendant SANTOS MARTINEZ (hereinafter, "MARTINEZ"), an individual, is and has at all relevant times herein been, an officer, director and/or shareholder of FRESH.

10. On information and belief, Defendant DON BEAM (hereinafter, "BEAM"), an individual, is and has at all relevant times herein been, an officer, director and/or shareholder of FRESH.

11. On information and belief, Defendant DARRYL NICHOLSON (hereinafter, "NICHOLSON"), an individual, is and has at all relevant times herein been, an officer, director and/or shareholder of FRESH.

1 12. On information and belief, Defendant RICHARD MAY (hereinafter, "MAY"), an
 2 individual, is and has at all relevant times herein been, an officer, director and/or shareholder of FRESH.

3 13. On information and belief, Defendant THOMAS COLOGNA (hereinafter, "COLOGNA"),
 4 an individual, is and has at all relevant times herein been, an officer, director and/or shareholder of
 5 FRESH.

6 14. On information and belief, Defendant PRESTWICK PARTNERS, LLC (hereinafter,
 7 "PRESTWICK"), is a limited liability company, formed and existing under the laws of the State of
 8 California, with its principal place of business in San Francisco, California. On information and belief,
 9 PRESTWICK is and has at all relevant times herein been a shareholder of FRESH.

10 15. On information and belief, Defendant SOLSTICE VENTURE PARTNERS, LLC
 11 (hereinafter, "SOLSTICE"), is a limited liability company, formed and existing under the laws of the State
 12 of California, with its principal place of business in San Francisco, California. On information and belief,
 13 SOLSTICE, is and has at all relevant times herein been a shareholder of FRESH.

14 16. On information and belief, Defendant VFINANCE INVESTMENTS (hereinafter,
 15 "VFINANCE"), a business entity form unknown, is and has at all relevant times herein been a shareholder
 16 of FRESH.

17 17. On information and belief, Defendant FMP VINEYARD, LLC ("FMP"), is a limited
 18 liability company formed and existing under the laws of the State of New Mexico. On information and
 19 belief, FMP is and has at all relevant times herein been a shareholder of FRESH.

20 18. On information and belief, Defendant BUTTONWOOD OPTION, LLC (hereinafter,
 21 "BUTTONWOOD"), a business entity form unknown, is and has at all relevant times herein been a
 22 shareholder of FRESH.

23 19. On information and belief, Defendant DW, LLC (hereinafter, "DW"), a business entity form
 24 unknown, is and has at all relevant times herein been a shareholder of FRESH.

25 20. On information and belief, Defendant M SOLAZZO TRUST 2002 (hereinafter,
 26 "SOLAZZO 2002 "), is and has at all relevant times herein been a shareholder of FRESH.

27 21. On information and belief, Defendant P. SOLAZZO 1998 (hereinafter, " SOLAZZO

1 1998"), is and has at all relevant times herein been a shareholder of FRESH.

2 22. On information and belief, Defendant GIBBONS FAMILY TRUST (hereinafter,
3 "GIBBONS"), is and has at all relevant times herein been a shareholder of FRESH.

4 23. On information and belief, Defendant BIXLER TRUST(hereinafter, " BIXLER"), is and
5 has at all relevant times herein been a shareholder of FRESH.

6 24. On information and belief, Defendant STEIGERWALD TRUST (hereinafter,
7 "STEIGERWALD"), is and has at all relevant times herein been a shareholder of FRESH.

8 25. On information and belief, Defendant CARTER TRUST (hereinafter, "CARTER"), is and
9 has at all relevant times herein been a shareholder of FRESH.

10 26. On information and belief, Defendant COMERICA BANK (hereinafter, "COMERICA"),
11 is and has at all relevant times herein been, a Texas corporation, and is licensed to do business and is doing
12 business within the State of California.

13 27. Defendants WILLIAMS, PARSON, CINELLI, HAGEN, MARTINEZ, BEAM,
14 NICHOLSON, MAY, COLOGNA, PRESTWICK, SOLSTICE, VFINANCE, FMP, BUTTONWOOD,
15 DW, SOLAZZO 2002, SOLAZZO 1998, GIBBONS, BIXLER, STEIGERWALD, and CARTER are
16 referred to collectively herein as the "RESPONSIBLY CONNECTED PARTIES".
17

18 28. Defendant FRESH, Defendant COMERICA, and the RESPONSIBLY CONNECTED
19 PARTIES are hereinafter referred to collectively as the "DEFENDANTS".

20 **GENERAL ALLEGATIONS CONCERNING RESPONSIBLY CONNECTED**
21 **PARTIES AND COMERICA**

22 29. On information and belief, the RESPONSIBLY CONNECTED PARTIES are and at all
23 relevant times herein have been, insiders of Defendant FRESH, with actual and/or constructive knowledge
24 of the provisions of the PACA, the PACA trust requirements and the provisions set forth therein, and who
25 are and/or were during all times relevant herein, responsible for the daily management and control of
26 Defendant FRESH, and who are and/or were during all relevant times herein, statutory trustees under
27 PACA, and in a position to control the PACA trust assets that are the subject of this lawsuit. In addition,
28 the RESPONSIBLY CONNECTED PARTIES are and/or were at all relevant times herein, responsible for

1 the daily management and control of Defendant FRESH, and therefore responsible for the compliance by
 2 Defendant FRESH with its fiduciary obligations to OCEANO.

3 30. On information and belief, Defendant FRESH ceased the operation of its business at the
 4 end of 2007 and is now in the process of liquidating its assets. Moreover, on information and belief, the
 5 assets that are being sold in liquidation by FRESH, and the accounts receivable that are being collected
 6 by FRESH, are being used to pay debts owed to COMERICA and/or to the RESPONSIBLY
 7 CONNECTED PARTIES, rather than to pay the PACA debts owed to OCEANO, which are described
 8 below. Further, on information and belief, prior to the closing of its business, FRESH distributed PACA
 9 trust assets to COMERICA and/or to the RESPONSIBLY CONNECTED PARTIES. Such actions
 10 constitute a diversion of PACA trust assets in violation of applicable law.

11 31. The trust provisions of the PACA, 7 U.S.C. 499e(c), provide that upon receipt of perishable
 12 agricultural commodities by FRESH, OCEANO became the beneficiary of a floating, non-segregated
 13 statutory trust on all of FRESH's perishable agricultural commodities, all inventories of food or other
 14 products derived from perishable agricultural commodities, and all receivables or proceeds from the sale
 15 of such perishable agricultural commodities or other products or assets derived therefrom. The beneficiary
 16 of a PACA trust is entitled to priority as to all PACA trust assets of the Defendant FRESH, ahead of
 17 administrative expenses, claims for attorneys' fees, and all claims of creditors, including those with valid
 18 security interests.

19 32. A party who receives trust funds, knowing that there has been a breach of trust under
 20 PACA, does so at his peril. Only a bona fide purchaser for value without notice of the breach of trust may
 21 keep trust funds so transferred. The RESPONSIBLY CONNECTED PARTIES do not fall within such
 22 category, and must refund any such trust monies received. Similarly, secured lenders with actual or
 23 constructive knowledge of a PACA trust are not bona fide purchasers and must refund any monies they
 24 receive in violation of the PACA trust. Such knowledge is imputed when the lender has a lien on PACA
 25 trust property and the lender knows that the debtor was engaged in the sale of perishable agricultural
 26 commodities. In such circumstances, a debtor's secured lender is required to disgorge monies which the
 27 debtor paid in reduction of its debt to the secured lender, which monies are then used for the benefit of

PACA trust beneficiaries.

33. On information and belief, COMERICA BANK and/or one or more of the RESPONSIBLY CONNECTED PARTIES received monies which arose from Defendant FRESH's business revenues, or from FRESH's accounts receivable, which would be a part of the PACA trust and recoverable from COMERICA BANK and/or one or more of the RESPONSIBLY CONNECTED PARTIES.

GENERAL ALLEGATIONS CONCERNING INTERVENTION

34. On January 29, 2008, this Court entered an Order granting Plaintiffs' Motion for Preliminary Injunction (the "Preliminary Injunction"), in the case in which Plaintiff OCEANO is seeking to intervene, namely ASA Farms, Inc., et al. v. Fresh 'N Healthy, Inc., et al., Case Number C08-00122JF (herein, "ASA Complaint"). A true and correct copy of the Preliminary Injunction entered in the action which is the subject of the ASA Complaint is attached hereto as **Exhibit "A"**, and incorporated herein by reference. The Preliminary Injunction, by its express terms, enjoins and restrains FRESH, the RESPONSIBLY CONNECTED PARTIES, and COMERICA from "dissipating, paying, transferring, assigning or selling" any PACA trust assets "without agreement of the parties", or further order of this Court, unless FRESH proves that a particular asset is not a PACA trust asset.

35. As more fully set forth in this Complaint, OCEANO claims an interest in the PACA trust assets which are the subject of the Preliminary Injunction and the ASA Complaint. Further, OCEANO is so situated that the making of agreements by the parties to the ASA Complaint, the entry of orders relating to the ASA Complaint, and/or the disposing of the ASA Complaint, may, as a practical matter, impair or impede OCEANO's ability to protect its interest in the PACA trust assets which are the subject of the ASA Complaint and the Preliminary Injunction.

36. On February 8, 2008, OCEANO sent a letter to counsel for FRESH, counsel to COMERICA, counsel to Plaintiffs in the ASA Complaint, and to other interested parties, notifying such counsel and parties of the interests of OCEANO in the PACA trust assets which are the subject of the Preliminary Injunction and the ASA Complaint, and warning such counsel and parties not to take any actions which are adverse to OCEANO's interests. A true and correct copy of such February 8, 2008 letter is attached hereto as **Exhibit "B"**, and incorporated herein by this reference. To date, OCEANO has

1 received no written response to its February 8, 2008 letter or assurances by the parties who are Plaintiffs
 2 or Defendants in the ASA Complaint that the interests of OCEANO in the PACA trust assets which are
 3 the subject of the Preliminary Injunction and the ASA Complaint will be protected.

4 37. Despite the notice sent by OCEANO on February 8, 2008, as referenced above, on February
 5 25, 2008, FRESH, COMERICA, and counsel to Plaintiffs in the ASA Complaint, filed with this Court a
 6 Stipulation to Modify Preliminary Injunction (the "Stipulation to Modify"), a true and correct copy of
 7 which is attached hereto as **Exhibit "C"** and incorporated herein by reference, which seeks to modify the
 8 Preliminary Injunction. The Stipulation to Modify was signed by counsel for the parties on February 21,
 9 2008 and February 22, 2008. Yet, OCEANO was never notified of the Stipulation to Modify nor consulted
 10 in any manner concerning the Stipulation to Modify. Oceano only discovered that the Stipulation to
 11 Modify had been entered into through its monitoring of Court filings on PACER.

12 38. Oceano objects to the Stipulation to Modify in that it contains no provisions requiring
 13 notice to the creditors of FRESH, nor does it contain any requirements that the assets of FRESH be sold
 14 for fair market value. On information and belief, COMERICA may be selling the assets of FRESH for less
 15 than fair market value to one or more of the RESPONSIBLY CONNECTED PARTIES, to the harm and
 16 detriment of OCEANO and other creditors of FRESH.

17 39. OCEANO has delayed filing the instant Complaint for several weeks after learning of the
 18 ASA Complaint and the Preliminary Injunction because OCEANO has previously been told that FRESH
 19 intended to file for bankruptcy protection. In such case, all creditors with an interest in the PACA trust
 20 assets would have a right to a pro-rata distribution of funds subject the PACA trust. However, on
 21 information and belief, to date FRESH has not filed for bankruptcy protection, so OCEANO's interests
 22 in the PACA trust assets, which are the subject of the Preliminary Injunction and the ASA Complaint,
 23 remain unprotected. Further, as noted above, OCEANO has learned this week that FRESH, COMERICA
 24 and the Plaintiff in the ASA Complaint entered into the Stipulation to Modify which does not protect
 25 OCEANO's interests.

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FIRST CAUSE OF ACTION
(For Breach of Written Contract)

40. OCEANO re-alleges and incorporates by reference all allegations contained in paragraphs 1 to 39, inclusive, of this Complaint, as if set forth in full herein.

41. At all relevant times herein, Defendant FRESH was engaged in the handling of produce in interstate commerce as a commission merchant, dealer, and/or broker, subject to the provisions of the PACA and the regulations promulgated by the United States Secretary of Agriculture pursuant to the PACA, under PACA License No. 20070799.

9 42. On or about the dates set forth below, OCEANO and FRESH entered into written
10 agreements whereby OCEANO agreed to sell to FRESH certain orders of perishable agricultural
11 commodities in interstate commerce (collectively referred to herein as the “Produce”), and FRESH agreed
12 to pay OCEANO the sums set forth below as consideration therefore. These purchases of Produce were
13 memorialized in writing in Invoices (the “Invoices”), true and correct copies of which are attached hereto
14 as Exhibit “D” and incorporated herein by reference.

15 43. The terms of the sale of the Produce were memorialized in writing in the Invoices attached
16 hereto as **Exhibit “D”**. In addition, OCEANO’s Invoices provide for late charges to be paid on all
17 balances outstanding over 30 days, at the rate of 1.5% per month or eighteen (18%) per annum. The total
18 amount owed to OCEANO by FRESH for the Produce as of the date of this Complaint was \$101,127.39,
19 plus late charges at the rate of eighteen (18%) per annum, as set forth in Oceano’s Age Analysis by
20 Customer/Ship Date included in **Exhibit “D”**.

44. OCEANO has performed all conditions, covenants and promises required by it on its part
to be performed in accordance with the terms and conditions of the foregoing written agreements relating
to the sale of the Produce.

45. Defendant FRESH breached its written agreements with OCEANO by failing and refusing
to pay to OCEANO the full amounts owed to OCEANO pursuant to the terms of the Invoices, although
the same is now past due. Although repeated demand for payment of said sums has been made upon
FRESH by OCEANO, no part thereof has been paid.

1 46. As a direct and proximate result of FRESH's failure to remit payments to OCEANO, as of
2 the date of this Complaint, there was due and owing, and unpaid from FRESH to OCEANO the sum of
3 \$101,127.39, plus late charges at the rate of eighteen percent (18%) per annum, plus attorneys' fees and
4 costs, according to proof.

SECOND CAUSE OF ACTION
(Accounts Stated)

7 47. OCEANO re-alleges and incorporates herein by reference each and every allegation
8 contained in Paragraphs 1 through 46, inclusive, of this Complaint, as if set forth in full herein.

9 48. OCEANO has repeatedly sent to FRESH Invoices in which the accounts were stated in
10 writing between OCEANO and FRESH, with a balance of \$101,127.39 shown due to OCEANO from
11 FRESH. Although demanded by OCEANO from FRESH, no part of this balance has been paid.

12 49. As of the date of this Complaint, there was due and owing, and unpaid from FRESH to
13 OCEANO the sum of \$101,127.39, plus late charges at the rate of eighteen percent (18%) per annum, plus
14 attorneys' fees and costs, according to proof.

THIRD CAUSE OF ACTION
(Open Book Account)

17 50. OCEANO re-alleges and incorporates herein by reference each and every allegation
18 contained in Paragraphs 1 through 49, inclusive, of this Complaint, as if set forth in full herein.

19 51. On the dates and in the amounts set forth in the Invoices, Defendant FRESH became
20 indebted to PLAINTIFF for said amounts as the reasonable value of the Produce furnished to FRESH, at
21 its specific instance and request.

22 52. Although demanded by OCEANO from FRESH, the balance on said open book account
23 has not been paid. As of the date of this Complaint, there was due and owing, and unpaid from FRESH
24 to OCEANO the sum of \$101,127.39, plus late charges at the rate of eighteen percent (18%) per annum,
25 plus attorneys' fees and costs, according to proof.

FOURTH CAUSE OF ACTION

53. OCEANO re-alleges and incorporates by reference all allegations contained in Paragraphs

1 to 52, inclusive, of this Complaint, as if set forth in full herein.

2 54. OCEANO delivered to FRESH, for sale and delivery by FRESH to the customers of
 3 FRESH in the course of interstate commerce, the Produce, which was perishable agricultural commodities,
 4 for which FRESH agreed to pay OCEANO the total sum of not less than \$101,127.39.

5 55. All of the Produce that OCEANO delivered to FRESH was of the kind, quality, grade and
 6 size called for under the terms of the Invoices between the parties.

7 56. On information and belief, all of the customers of FRESH have accepted and paid for the
 8 Produce, but FRESH has failed and refused to pay PLAINTIFF the agreed sums for said commodities,
 9 leaving a balance due to OCEANO in the sum of at least \$101,127.39, together with late charges from
 10 the dates payment on each Invoice was due.

11 57. Each of the Invoices provide the following on the front of the Invoice: "The perishable
 12 agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section
 13 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these
 14 commodities retains a trust claim over these commodities, all inventories of food or other products derived
 15 from these commodities, and any receivables or proceeds from the sale of these commodities until full
 16 payment is received." Therefore, under the PACA trust provisions, 7 U.S.C. §499e(c), OCEANO is the
 17 beneficiary of a floating, non-segregated statutory trust on all of FRESH's perishable agricultural
 18 commodities, all inventories of food or other products derived from perishable agricultural commodities,
 19 and all receivables or proceeds from the sale of such perishable agricultural commodities or other products
 20 or assets derived therefrom, until OCEANO is paid in full for the amounts it is owed for the Produce.

22 58. OCEANO has performed and fulfilled all duties required by the PACA trust provisions in
 23 order to preserve its PACA trust benefits in the amount alleged in this Complaint to be due and owing from
 24 FRESH to OCEANO (7 U.S.C. §499e(c)(1)-(4)). As a result, OCEANO holds a perfected interest as a
 25 statutory trust beneficiary in the PACA trust assets held by, or previously held by, FRESH. Indeed, the
 26 PACA trust assets are not, and never became, the property of FRESH. Rather, as the beneficiary of the
 27 PACA trust, OCEANO holds equitable title to the trust assets, including all inventories of perishable
 28 agricultural commodities, and all assets purchased with, or maintained by, the proceeds from the sale of

1 perishable agricultural commodities.

2 59. The PACA trust requires and required FRESH, and the RESPONSIBLY CONNECTED
 3 PARTIES, to hold and to preserve all perishable agricultural commodities, proceeds and receivables in trust
 4 for the benefit of OCEANO until full payment is made to OCEANO for the Produce. On information and
 5 belief, FRESH and the RESPONSIBLY CONNECTED PARTIES have failed to maintain the trust assets
 6 and to keep them available to satisfy FRESH's obligations to OCEANO, all in violation of the provisions
 7 of PACA and the regulations promulgated thereunder. FRESH and the RESPONSIBLY CONNECTED
 8 PARTIES have failed to perform the requirements of the PACA statutory trust provisions, express and
 9 implied, and have breached their fiduciary duties to maintain the trust assets, all in violation of PACA, and
 10 the regulations promulgated thereunder.

11 60. OCEANO is informed and believes and thereon alleges that FRESH and the
 12 RESPONSIBLY CONNECTED PARTIES improperly dissipated OCEANO's interest in the trust assets
 13 by failing to maintain the trust, and by using the trust assets for purposes other than for paying OCEANO,
 14 all in violation of the PACA, 7 U.S.C. §§499b(4) and 499e(c). On information and belief, FRESH and the
 15 RESPONSIBLY CONNECTED PARTIES transferred or diverted all or a portion of the trust assets, namely
 16 receivables or proceeds derived from the sale of produce, to COMERICA BANK, and/or to the
 17 RESPONSIBLY CONNECTED PARTIES, and/or to an unknown party or parties in violation of the
 18 statutory duties of FRESH and the RESPONSIBLY CONNECTED PARTIES under the PACA to preserve
 19 the trust assets for the benefit of OCEANO. Said transfers of trust assets to COMERICA, and/or to the
 20 RESPONSIBLY CONNECTED PARTIES, were made while COMERICA and the RESPONSIBLY
 21 CONNECTED PARTIES had actual and/or constructive notice of OCEANO's PACA trust claims and
 22 FRESH's obligations to OCEANO. The statutory trust created by the PACA unequivocally gives priority
 23 to the interest of OCEANO on all inventories of products derived from perishable agricultural commodities,
 24 and any receivables or proceeds from the sale of such commodities or products, that have been transferred
 25 to COMERICA, and/or to the RESPONSIBLY CONNECTED PARTIES, and/or other secured or
 26 unsecured creditors of FRESH who are not PACA trust creditors.

27 61. As a direct and proximate cause and result of the wrongful acts and omissions of FRESH

1 and the RESPONSIBLY CONNECTED PARTIES, OCEANO has suffered the loss of at least \$101,127.39,
 2 all of which qualifies for protection under the PACA trust, together with late charges at the rate of eighteen
 3 percent (18%) per annum, and attorneys' fees and costs in an amount to be determined according to proof.

4 62. FRESH, the RESPONSIBLY CONNECTED PARTIES, and COMERICA must immediately
 5 account to OCEANO for all PACA trust assets currently in the possession of FRESH and/or the
 6 RESPONSIBLY CONNECTED PARTIES, and must immediately disgorge them to OCEANO until full
 7 payment for the perishable agricultural commodities sold and shipped by OCEANO to FRESH has been
 8 made to OCEANO.

9 **FIFTH CAUSE OF ACTION**
 10 **(For Violation of the PACA—Failure to Account and Pay Promptly)**

11 63. OCEANO realleges and incorporates by reference all allegations contained in Paragraphs
 12 1 to 62, inclusive, of this Complaint, as if set forth in full herein.

13 64. OCEANO has repeatedly demanded that FRESH, the RESPONSIBLY CONNECTED
 14 PARTIES and/or COMERICA, pay the amounts due to OCEANO stated above, for perishable agricultural
 15 commodities sold and delivered to FRESH, as described above. Despite these demands, FRESH, the
 16 RESPONSIBLY CONNECTED PARTIES and/or COMERICA have failed and refused to truly, correctly,
 17 and accurately account for and make full payment to Plaintiff for the Produce. Therefore, FRESH has failed
 18 to perform the requirements of said Invoices, express and implied, and has breached its duty to account and
 19 pay for the Produce sold, and has diverted PACA trust assets, all in violation of the PACA, 7 U.S.C. §§499e
 20 *et seq.*, and all other pertinent regulations issued by the Secretary of Agriculture to the PACA. Accordingly,
 21 FRESH, the RESPONSIBLY CONNECTED PARTIES and/or COMERICA, have breached their duties
 22 to account for any PACA trust assets they have received from FRESH, and have diverted PACA trust assets
 23 to themselves and/or to other third parties, resulting in the failure to pay the PACA trust assets to the
 24 rightful owner, OCEANO, the PACA trust beneficiary, all in violation of the provisions of the PACA, and
 25 other pertinent regulations issued by the Secretary of Agriculture pursuant to the PACA.

26 65. As a direct and proximate cause and result of the wrongful acts and omissions of FRESH,
 27 the RESPONSIBLY CONNECTED PARTIES, and COMERICA, as alleged above, OCEANO has suffered

1 losses in the amount of at least \$101,127.39 due and owing to OCEANO from the sale of perishable
 2 agricultural commodities, which sum has been wrongfully withheld or diverted by FRESH, the
 3 RESPONSIBLY CONNECTED PARTIES, and COMERICA, plus late charges on all past due amounts
 4 at the rate of eighteen percent (18%) per annum, plus attorneys' fees and costs, according to proof.

5 **SIXTH CAUSE OF ACTION**
 6 **(Conversion)**

7 66. OCEANO re-alleges and incorporates by reference all allegations contained in Paragraphs
 8 1 to 65, inclusive, of this Complaint, as if set forth in full herein.

9 67. At all times relevant herein, OCEANO was and is entitled to possession of the specific sums
 10 as alleged herein in the total amount of at least \$101,127.39, plus late charges at the rate of eighteen percent
 11 (18%) per annum.

12 68. Since the Produce was sold by OCEANO to FRESH, and continuing thereafter, OCEANO
 13 has repeatedly demanded the immediate turnover by FRESH, the RESPONSIBLY CONNECTED
 14 PARTIES, and/or COMERICA of the above-mentioned sums as they became due, but FRESH, the
 15 RESPONSIBLY CONNECTED PARTIES, and/or COMERICA, have failed and refused, and continue to
 16 fail and refuse, to turn over such sums of money to OCEANO. On information and belief, FRESH, the
 17 RESPONSIBLY CONNECTED PARTIES, and/or COMERICA have diverted payments of accounts
 18 receivable, assets of the PACA trust, and monies due and owing to OCEANO to themselves and/or to other
 19 third parties.

20 69. As a direct and proximate result of the aforementioned wrongful acts of FRESH, the
 21 RESPONSIBLY CONNECTED PARTIES, and/or COMERICA, OCEANO has suffered losses in the
 22 amount of at least \$101,127.39, plus late charges on all past due amounts at the rate of eighteen (18%) per
 23 annum, plus attorneys' fees and costs. In addition, in doing and omitting to do the foregoing, FRESH, the
 24 RESPONSIBLY CONNECTED PARTIES, and COMERICA, and their officers, directors and/or managing
 25 agents, were guilty of malice, fraud, and oppression, and therefore, OCEANO is entitled to an award of
 26 punitive and exemplary damages according to proof.

27 \\

28 .

SEVENTH CAUSE OF ACTION
(Unjust Enrichment)

70. OCEANO re-alleges and incorporates by reference all allegations contained in Paragraphs 1 to 69, inclusive, of this Complaint, as if set forth in full herein.

5 71. On information and belief, FRESH received all of the rights and benefits due to FRESH
6 pursuant to the Invoices, but failed to meet its obligations to OCEANO pursuant to the Invoices, and did
7 not remit to OCEANO all of the amounts due to OCEANO for the Produce sold by OCEANO to FRESH.
8 On information and belief, FRESH and the RESPONSIBLY CONNECTED PARTIES transferred or
9 diverted all or a portion of the trust assets, namely receivables or proceeds derived from the sale of the
10 Produce, to COMERICA BANK, to the RESPONSIBLY CONNECTED PARTIES and/or to an unknown
11 party or parties in violation of the statutory duties of FRESH and the RESPONSIBLY CONNECTED
12 PARTIES under the PACA to preserve the trust assets for the benefit of PLAINTIFF. Said transfers of trust
13 assets to COMERICA were made while COMERICA had actual and/or constructive notice of OCEANO's
14 PACA trust claims and FRESH's obligations to OCEANO. FRESH, the RESPONSIBLY CONNECTED
15 PARTIES, and COMERICA have converted for their own use and benefit, the Produce delivered to FRESH
16 by OCEANO, and/or the proceeds derived therefrom, valued in the cumulative amount of at least
17 \$101,127.39.

72. If FRESH, the RESPONSIBLY CONNECTED PARTIES, and/or COMERICA are allowed to continue to convert and/or use such Produce and/or proceeds derived therefrom, they will be unjustly enriched to the detriment of OCEANO.

73. As a direct and proximate result of the wrongful conversion of funds due to OCEANO, OCEANO has been damaged and FRESH, the RESPONSIBLY CONNECTED PARTIES, and/or COMERICA have been unjustly enriched in the cumulative amount of at least \$101,127.39, plus such other amounts to be determined according to proof.

EIGHTH CAUSE OF ACTION
(Constructive Trust/Disgorgement)

74. OCEANO realleges and incorporates by reference all allegations contained in Paragraphs
1 to 73, inclusive, of this Complaint, as if set forth in full herein.

1 75. OCEANO is informed and believes and thereon alleges that FRESH and the
 2 RESPONSIBLY CONNECTED PARTIES induced Plaintiff to sell the Produce to FRESH.

3 76. OCEANO is informed and believes and thereon alleges that FRESH and/or the
 4 RESPONSIBLY CONNECTED PARTIES took such action and made such promises with the intent to
 5 defraud OCEANO and to induce OCEANO to sell perishable agricultural commodities to FRESH, and
 6 thereby acquire and keep such property and the sales proceeds thereof for their own use.

7 77. OCEANO is informed and believes and thereon alleges that at the time of such acts and
 8 promises by FRESH and/or the RESPONSIBLY CONNECTED PARTIES as alleged here, OCEANO was
 9 unaware of their secret intentions and therefore acted reasonably in relying on their acts and promises, and
 10 that if OCEANO had known of their secret intention not to perform, OCEANO would not have acted in
 11 reliance upon their promises, and continued to deliver and sell the Produce to FRESH.

12 78. On information and belief, FRESH and the RESPONSIBLY CONNECTED PARTIES
 13 transferred or diverted all or a portion of the trust assets, namely receivables or proceeds derived from the
 14 sale of produce, to the RESPONSIBLY CONNECTED PARTIES, to COMERICA BANK, and/or to an
 15 unknown party or parties in violation of the statutory duties of FRESH and the RESPONSIBLY
 16 CONNECTED PARTIES under the PACA to preserve the trust assets for the benefit of PLAINTIFF. Said
 17 transfers of trust assets to COMERICA were made while COMERICA had actual and/or constructive notice
 18 of OCEANO's PACA trust claims and FRESH's obligations to OCEANO. FRESH, the RESPONSIBLY
 19 CONNECTED PARTIES, and/or COMERICA have converted for their own use and benefit, the Produce
 20 delivered to FRESH by OCEANO, and/or the proceeds derived therefrom, valued in the cumulative amount
 21 of at least \$101,127.39.

22 79. OCEANO is further informed and believes and thereon alleges that FRESH, the
 23 RESPONSIBLY CONNECTED PARTIES, and COMERICA are in possession of PACA trust assets
 24 rightfully belonging to OCEANO and in which OCEANO has a beneficial interest, consisting of cash on
 25 deposit, inventory of perishable agricultural commodities, accounts receivable, the proceeds of sale
 26 therefrom, and/or other property which was acquired through the use of PACA trust assets.

27 80. OCEANO has demanded the immediate turnover of all such PACA trust assets in the

1 possession of FRESH, the RESPONSIBLY CONNECTED PARTIES, and COMERICA; however, FRESH,
2 the RESPONSIBLY CONNECTED PARTIES, and COMERICA have failed and refused, and continue to
3 fail and refuse, to turnover said PACA trust assets to OCEANO.

4 81. By virtue of OCEANO's status as a PACA trust beneficiary and by virtue of the possession
5 of PACA trust assets described herein by FRESH, the RESPONSIBLY CONNECTED PARTIES, and/or
6 COMERICA, then FRESH, the RESPONSIBLY CONNECTED PARTIES, and/or COMERICA hold such
7 PACA trust assets in trust as constructive trustees for OCEANO's benefit.

82. OCEANO does not know the specific value of the PACA trust assets held by each of
FRESH, the RESPONSIBLY CONNECTED PARTIES, and/or COMERICA, and therefore a full
accounting is necessary to determine the scope, extent, and value of PACA trust assets being held by
FRESH, the RESPONSIBLY CONNECTED PARTIES, and/or COMERICA.

83. OCEANO is informed and believes and thereon alleges that FRESH, the RESPONSIBLY
3 CONNECTED PARTIES, and COMERICA hold monies, inventory, accounts receivable, and/or other
4 PACA trust assets belonging to OCEANO in the cumulative amount of at least \$101,127.39, the value of
5 the Produce sold by OCEANO to FRESH, as constructive trustees for the benefit of OCEANO.

NINTH CAUSE OF ACTION
(Declaratory Relief)

8 84. OCEANO re-alleges and incorporates by reference all allegations contained in Paragraphs
9 1 to 83, inclusive, of this Complaint, as if set forth in full herein.

85. An actual controversy has arisen and now exists relating to the rights and duties of the parties in that OCEANO contends that the PACA requires FRESH, the RESPONSIBLY CONNECTED PARTIES, and COMERICA to preserve and to immediately surrender sufficient PACA trust assets to pay OCEANO in full for the Produce. FRESH, the RESPONSIBLY CONNECTED PARTIES, and COMERICA have failed and/or otherwise refused to acknowledge and to act on their obligations under the PACA trust provisions and/or to recognize OCEANO's priority interest in the trust assets held by FRESH, the RESPONSIBLY CONNECTED PARTIES, and/or COMERICA, or to otherwise acknowledge the validity of the statutory trust provisions.

1 86. OCEANO seeks an Order of this Court declaring that its PACA trust claim is superior to
 2 and has priority over all claims that FRESH, the RESPONSIBLY CONNECTED PARTIES, and/or
 3 COMERICA may assert to the accounts receivable, inventory, proceeds and other property of FRESH,
 4 which is the subject of the PACA trust provisions, except those rights of any other properly perfected
 5 PACA trust creditors, to the extent such receivables, inventory, proceeds and other property constitute the
 6 corpus of the PACA trust funds of which OCEANO is a beneficiary. OCEANO will show that any
 7 perfected security interest that a third party might have who is not a PACA trust beneficiary in FRESH's
 8 accounts receivable, inventory, or proceeds is secondary and specifically avoidable, as a matter of law, to
 9 satisfy payments to PACA trust beneficiaries, including OCEANO.

10 87. Further, OCEANO seeks a declaratory judgment from this Court establishing (1) that the
 11 PACA trust funds never became the property of FRESH, the RESPONSIBLY CONNECTED PARTIES,
 12 and/or COMERICA ; (2) that OCEANO's trust claim under the PACA is superior to and takes priority over
 13 any secured and unsecured claims of any third party (other than other PACA trust beneficiaries), to
 14 FRESH's accounts receivable, inventory, and the proceeds thereof; and (3) that only funds in excess of the
 15 trust funds necessary to pay the PACA trust claimants are property of FRESH, the RESPONSIBLY
 16 CONNECTED PARTIES, and/or COMERICA or their estate, and thus possibly subject to a third party's
 17 liens or claims, if such are established.

18 WHEREFORE, PLAINTIFF prays for judgment as follows:

19 **FIRST CAUSE OF ACTION FOR BREACH OF WRITTEN CONTRACT:**

20 1. For actual damages in the sum of at least \$101,127.39, as against FRESH;
 21 2. For pre-judgment late charges at the rate of eighteen percent (18%) per annum, and post-
 22 judgment interest thereon at the highest rate allowed by law, according to proof;
 23 3. For costs of suit, including reasonable attorneys' fees, according to proof; and
 24 4. For such other and further relief as the court may deem proper.

25 **SECOND CAUSE OF ACTION FOR ACCOUNTS STATED:**

26 1. For damages against FRESH in the total amount of at least \$101,127.39;
 27 2. For pre-judgment late charges at the rate of eighteen percent (18%) per annum, and post-

1 judgment interest at the highest rate allowed by law, according to proof;

2 3. For costs of suit, including reasonable attorneys' fees, according to proof; and

3 4. For such other and further relief as the court may deem just and proper.

4 **THIRD CAUSE OF ACTION FOR OPEN BOOK ACCOUNT:**

5 1. For damages against FRESH in the total amount of at least \$101,127.39;

6 2. For pre-judgment late charges at the rate of eighteen percent (18%) per annum, and post-

7 judgment interest at the highest rate allowed by law, according to proof;

8 3. For costs of suit, including reasonable attorneys' fees, according to proof; and

9 4. For such other and further relief as the court may deem just and proper.

10 **FOURTH CAUSE OF ACTION FOR ENFORCEMENT OF THE STATUTORY TRUST
11 PROVISIONS OF THE PACA & DISGORGEMENT:**

12 1. For an order requiring all of the DEFENDANTS to immediately account for and pay all
13 PACA trust assets to OCEANO in the total sum of at least \$101,127.39;

14 2. For pre-judgment late charges at the rate of eighteen percent (18%) per annum, and post-

15 judgment interest at the highest rate allowed by law, according to proof;

16 3. For costs of suit, including reasonable attorneys' fees, according to proof; and

17 4. For such other and further relief as the court may deem just and proper.

18 **FIFTH CAUSE OF ACTION FOR VIOLATION OF THE PACA: FAILURE TO ACCOUNT AND
19 PAY PROMPTLY:**

20 1. For damages against the all of the DEFENDANTS in the total sum of at least \$101,127.39;

21 2. For an order requiring all of the DEFENDANTS to promptly account for and pay all PACA
22 trust assets held on behalf of OCEANO;

23 3. For pre-judgment late charges at the rate of eighteen percent (18%) per annum, and post-

24 judgment interest at the highest rate allowed by law, according to proof;

25 4. For costs of suit, including reasonable attorneys' fees, according to proof; and

26 5. For such other and further relief as the court may deem just and proper.

27 **SIXTH CAUSE OF ACTION FOR CONVERSION:**

28 1. For value of the monies converted in the amount of at least \$101,127.39;

1 2. For punitive and exemplary damages against all of the DEFENDANTS in an amount
 2 according to proof;

3 3. For pre-judgment late charges at the rate of eighteen percent (18%) per annum, and post-
 4 judgment interest at the highest rate allowed by law, according to proof;

5 4. For costs of suit, including reasonable attorneys' fees; and

6 5. For such other and further relief as the court may deem just and proper.

7 **SEVENTH CAUSE OF ACTION FOR UNJUST ENRICHMENT:**

8 1. For damages against all of the DEFENDANTS in the total sum in the amount of at least
 9 \$101,127.39;

10 2. For pre-judgment late charges at the rate of eighteen percent (18%) per annum, and post-
 11 judgment interest at the highest rate allowed by law, according to proof;

12 3. For costs of suit, including reasonable attorneys' fees, according to proof; and

13 4. For such other and further relief as the court may deem just and proper.

14 **EIGHTH CAUSE OF ACTION FOR CONSTRUCTIVE TRUST/DISGORGEMENT:**

15 1. For a declaration that all of the DEFENDANTS hold at least \$101,127.39 in trust for the
 16 benefit of OCEANO;

17 2. For an order compelling all of DEFENDANTS to transfer legal title and possession of such
 18 sums to OCEANO;

19 3. For costs of suit, including reasonable attorneys' fees, according to proof; and

20 4. For such other and further relief as the court may deem just and proper.

22 **NINTH CAUSE OF ACTION FOR DECLARATORY RELIEF:**

23 1. For a declaratory judgment establishing that:

24 a. The PACA trust assets never became the property of any of the DEFENDANTS, and
 25 that they must be immediately turned over to OCEANO until OCEANO is paid in full, including pre-
 26 judgment late charges, post-judgment interest, costs and attorneys' fees according to proof;

27 b. The PACA trust assets held by the DEFENDANTS may not be used to pay any non-
 28 PACA claim or for any other purpose without the consent of OCEANO or order of the Court, until

1 PLAINTIFF is paid in full, including pre-judgment late charges, post-judgment interest, costs and attorneys'
2 fees according to proof;

7 d. Only funds in excess of the trust funds necessary to pay OCEANO as a PACA trust
8 claimant are the property of the estate of DEFENDANTS or possibly subject to DEFENDANT's liens or
9 claims, if any are established;

10 2. For enforcement of the trust provisions of the PACA through payment of the sum of
11 \$101,127.39;

3. For pre-judgment late charges at the rate of eighteen percent (18%) per annum, and post-judgment interest at the highest rate allowed by law, according to proof;

4. For costs of suit, including reasonable attorneys' fees, according to proof; and

5. For such other and further relief as the court may deem just and proper

DEMAND FOR JURY TRIAL

OCEANO hereby demands a trial by jury.

ANASTASSIOU & ASSOCIATES

By:

Effie F. Anastassiou
Attorneys for Intervening Plaintiffs
OCEANO PACKING, CO., INC.

EXHIBIT A

(Oceano's Complaint-In-Intervention)

E-Filed 1/29/2008

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ASA FARMS, INC., a California corporation and
BRAGA RANCH,

Case Number C08-00122 JF

ORDER¹GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

[re: docket no. 2]

FRESH 'N HEALTHY, INC. A Delaware corporation, et al.,

Defendant.

ASA Farms, Inc. and Braga Ranch (“Plaintiffs”) allege that Fresh ‘N Healthy, Inc. (“h”) owes them \$302,756.84 for produce purchased in a series of transactions between November 9, 2007 and December 28, 2007. Plaintiffs seek a preliminary injunction enjoining its agents, officers, directors, shareholders, subsidiaries, assigns and all persons in active participation with them who receive actual notice of this Order from dissipating the assets of a Perishable Agricultural Commodities Act (“PACA”) statutory trust. 7 U.S.C. § 1461(a)(5) invests courts with the authority to provide injunctive relief to prevent dissipation of assets.

¹ This disposition is not designated for publication and may not be cited.

1 PACA trust. Although it has not filed opposition to the motion, Fresh did raise certain objections
2 to Plaintiffs' proposed order. Notwithstanding these objections, Fresh consents to entry of a
3 preliminary injunction.

4 **IV. ORDER**

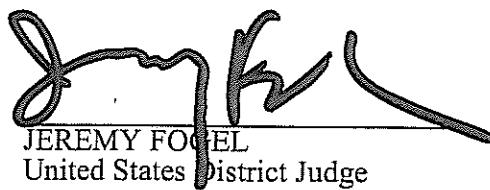
5 Good cause therefor appearing, IT IS HEREBY ORDERED that:

6 1. Defendant Fresh, its agents, officers, directors, subsidiaries, assigns and banking
7 institutions² and all persons in active concert or participation with them who
8 receive actual notice of this Order, are enjoined and restrained from dissipating,
9 paying, transferring, assigning or selling any and all assets covered by or subject
10 to the trust provisions of the PACA without agreement of the parties or until
11 further order of this Court. Under § 499e(c)(2) of PACA, the assets subject to this
12 Order include all assets of Fresh, unless Fresh can prove that a particular asset is
13 not derived from perishable agricultural commodities, inventories of food or other
14 products derived from perishable agricultural commodities or receivables or
15 proceeds from the sale of such commodities or products. *See In re Kornblum &*
16 *Co.*, 81 F.3d 280 (2d Cir. 1996) (holding that the burden is on the defendant to
17 demonstrate that dissipated assets were not purchased with PACA trust assets).
18 2. This Order shall be binding upon the parties to this action, their officers, agents,
19 employees, banking institutions or attorneys and all other persons or entities who
20 receive actual notice of this Order by personal service or otherwise.
21 3. Plaintiffs shall not be required to post a bond.

24
25 ² Without citing any authority, Fresh argues that this Court cannot enjoin banking
26 institutions because Fresh has no control over its banking institutions and those institutions are
27 not parties to this case. However, where a PACA debtor deposits PACA assets into a bank
28 account, courts may enjoin the bank from distributing those funds. *Cont'l Fruit Co. v. Gatziolis*
& Co., 774 F. Supp. 499 (N.D. Ill. 1991). Defendants bear the burden of proving that a particular
asset is not a PACA asset. Fresh has not made any argument that the assets controlled by any
particular banking institutions are not PACA assets.

1 DATED: January 29, 2008.

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JEREMY FOGEL
United States District Judge

1 This Order has been served upon the following persons:

2 Kelly McCarthy Sutherland kelly@lomgil.com

3 James Washburn Sullivan jim@lomgil.com

4 Kenneth Gorman ken@lomgil.com

5 Robert Anthony Franklin rfranklin@murraylaw.com

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EXHIBIT B

(Oceano's Complaint-In-Intervention)

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February 8, 2008

Via Facsimile & U.S. Mail

Steve O'Neill, Esq.
Murray and Murray
19400 Stevens Creek Blvd., Suite 200
Cupertino, CA 95014

**Re: PACA Claim
Our Client: Oceano Packing Company**

Dear Counsel:

This firm represents Oceano Packing Company, LLC ("Oceano"), which has a PACA claim for monies owed from the sale of perishable commodities against Fresh 'N Healthy, Inc. ("Fresh"), among others, which it has filed with the U.S.D.A. PACA Branch as an informal Complaint, but which has not yet been filed as a lawsuit in U.S. District Court.

This letter confirms my conversation with Steve O'Neill, Fresh's counsel, of earlier today in which Mr. O'Neill stated that Fresh would most likely be filing bankruptcy in the near future. Based on Mr. O'Neill's representations, Oceano has not yet filed a PACA lawsuit of its own in U.S. District Court, or attempted to intervene in any pending lawsuit against Fresh, prior to the commencement of the bankruptcy, because the lawsuit would end up being subject to the automatic stay created by the bankruptcy filing. If Fresh does not intend to file bankruptcy, please notify this firm immediately. We would like to have a written response regarding Fresh's intentions with respect to a bankruptcy filing on or before February 15, 2008, in order to protect our client's interests.

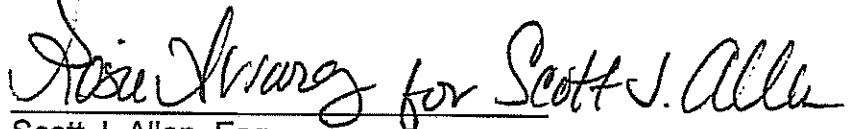
Further, Oceano is aware of the preliminary injunction (the "PI"), dated January 29, 2008, issued against Fresh and others in the U.S. District Court case styled ASA Farms.

Inc. v. Fresh 'N Healthy, Inc., N.D.Cal. case number C08-00122. It is Oceano's position that the PI protects all PACA claimants, including Oceano. If Fresh or any other party intend to take, or agree to, any action that is not authorized by the PI, please notify this firm immediately so that Oceano can take appropriate action to protect its interests.

If you have any questions or concerns regarding these matters, please feel free to call Effie Anastassiou or myself. Otherwise we look forward to hearing from you by February 15, 2008.

Sincerely,

Anastassiou & Associates



Scott J. Allen, Esq.

Attorneys for Oceano Packing Company, LLC

cc: Kelly Sutherland, Esq. (Attorney for ASA Farms Inc., and Braga Ranch)
Lombardo & Gilles
P.O. Box 2119
Salinas, CA 93902

Marion Quesenbery, Esq. (Attorney for Dobler & Sons, LLC)
Rynn & Janowsky, LLP
P.O. Box 20799
Oakland, CA 94620-0799

Robert Edward Izmirian, Esq. (Attorney for Comerica Bank)
Buchalter Nemer
333 Market Street, 25th Floor
San Francisco, CA 94105

Terry O'Connor, Esq. (Attorney for Jack Parson, an Individual)
Noland Hamerly Etienne & Hoss
P.O. Box 2510
Salinas, CA 93902

Oceano Packing Company, LLC

F:\OCA\Fresh 'N Healthy\2.08.08 Steve O'Neill.wpd

EXHIBIT C

(Oceano's Complaint-In-Intervention)

Case 5:08-cv-00122-JF Document 20 Filed 02/25/2008 Page 1 of 5

Feb-22-08 02:28pm From-Buchalter Nemer SF

T-259 P.002/005 F-637

1 STEPHEN T. O'NEILL (115132)
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 4 A Professional Corporation
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 9 Email: soneill@murraylaw.com
 10 Email: rfranklin@murraylaw.com

11 Attorneys Specially Appearing for Defendant
 12 FRESH 'N HEALTHY, INC.

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

15 ASA FARMS, INC., a California
 16 corporation and BRAGA RANCH,

17 Plaintiffs,

18 vs.

19 FRESH 'N HEALTHY, INC., a Delaware
 20 corporation, MARK WILLIAMS, an
 21 individual; JACK PARSON, an individual;
 22 STEVEN CINELLI, an individual; CHAD
 23 HAGEN, an individual, SANTOS
 24 MARTINEZ, an individual; DON BEAM,
 25 an individual; DARRYL NICHOLSON, an
 26 individual; RICHARD MAY, an
 27 individual; THOMAS COLOGNA, an
 28 individual; PRESTWICK PARTNERS,
 LLC, a California limited liability
 company; SOLSTICE VENTURE
 PARTNERS, LLC, a business entity form
 unknown; VFINANCE INVESTMENTS, a
 business entity form unknown; FMP
 VINEYARD, LLC, a New Mexico limited
 liability company, BUTTONWOOD
 OPTION, LLC, a business entity form
 unknown; DW, LLC, a business entity
 form unknown; M SOLAZZO TRUST
 2002; P. SOLAZZO 1998; GIBBONS
 FAMILY TRUST; BIXLER TRUST;
 STEIGERWALD TRUST and CARTER
 TRUST, and DOES 1 through 50,
 inclusive.

29 Defendants.

30 Case No. C08-00122 PVT

31 **STIPULATION TO MODIFY
 32 PRELIMINARY INJUNCTION**

33 **(RE: DOCKET NO. 2)**

Case 5:08-cv-00122-JF Document 20 Filed 02/25/08 Page 2 of 5

Feb-22-08 02:29pm From-Buchalter Nemar SF + T-250 P.003/005 F-637

1 This Stipulation, made and entered into by and between Plaintiffs ASA Farms, Inc. and
2 Braga Ranch ("Plaintiffs") and Defendant Fresh 'N Healthy, Inc. ("Defendant") is based upon the
3 following facts:

4 A. On or about January 29, 2008 this Court made and entered its Order Granting
5 Plaintiffs' Motion For Preliminary Injunction (the "Order"), which prevents, among other things,
6 Defendant from selling or transferring "any or all assets covered by or subject to the trust
7 provisions of the PACA without agreement of the parties or until further order of this Court."
8 [Order 2:6-11.]

12 C. Defendant contends, and Plaintiffs reserve their rights with respect to such
13 contentions, that its machinery, fixtures, equipment and intellectual property were purchased with
14 non-PACA assets, including paid in capital and loans from, among others, Comerica Bank.

15 D. Defendant is in default of its obligations to its lender Comerica Bank and has
16 ceased to conduct business. The net realizable value of Defendant's machinery, fixtures,
17 equipment and intellectual property is at risk of diminution due to lack of security, lack of
18 maintenance and the accrual of rents and other storage charges. Defendant desires to sell all or
19 substantially all of its machinery, fixtures, equipment and intellectual property in one or more
20 private sales, as summarized on Exhibit A hereto. Comerica Bank, as secured lender, has
21 consented to such sales of its collateral.

22 E. In order to preserve Plaintiffs' rights, if any, in and to the proceeds of the
23 machinery, fixtures, equipment and intellectual property the parties have agreed to the entry of an
24 order modifying the Order on the terms set forth below.

STIPULATION

26 IT IS HEREBY STIPULATED AND AGREED that this Court may make and enter its
27 order as follows:

28 1. Defendant is hereby authorized to sell, in one or more private sales, its machinery,

BN 1746173v2

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STIPULATION TO MODIFY PRELIMINARY INJUNCTION - CASE NO. C08-00122 PVT

Received Time Feb. 22. 2:43PM

Case 5:08-cv-00122-JF Document 20 Filed 02/25/2008 Page 3 of 5

Feb-22-08 02:29pm From: Buchalter Nemer SF

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T-250 P 004/005 F-637

1 fixtures, equipment and intellectual property, including labels, packaging and unregistered trade
 2 names and trademarks, provided, however, that the proceeds of such sale or sales shall be held in
 3 a segregated account at Comerica Bank subject to any and all claims of Plaintiffs, if any, to assert
 4 PACA rights thereto.

5 2. Except as expressly set forth, nothing herein contained shall waive, alter or modify
 6 the rights of the parties under the Order, and the segregated proceeds shall be subject to Plaintiffs'
 7 PACA rights, if any, to the same extent and with the same validity and priority as such rights
 8 attached to the machinery, fixtures, equipment and intellectual property itself.

9

10 DATED: February , 2008MURRAY & MURRAY
A Professional Corporation

11

12

By: _____

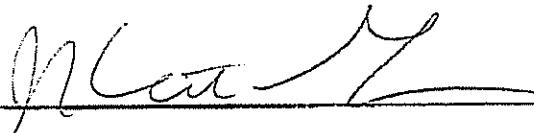
13

14 Attorneys Specially Appearing for Defendant
15 FRESH 'N HEALTHY, INC.

16

17 DATED: February 21, 2008

18 LOMBARDO & GILLES, LLP

19 By: 
20 Attorneys for Plaintiffs
ASA FARMS, INC., and BRAGA RANCH

21

22 Comerica Bank hereby consents to entry of the foregoing order and agrees to be bound
 23 thereby.

24

DATED: February 22, 2008BUCHALTER NEMER
A Professional Corporation

25

By: ROBERT E. IZMIRIAN
Attorneys for
COMERICA BANK

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BN 1746173v2

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STIPULATION TO MODIFY PRELIMINARY INJUNCTION - CASE NO. C08-00122 PVT

Received Time Feb. 22. 2:43PM

1 fixtures, equipment and intellectual property, including labels, packaging and unregistered trade
2 names and trademarks, provided, however, that the proceeds of such sale or sales shall be held in
3 a segregated account at Comerica Bank subject to any and all claims of Plaintiffs, if any, to assert
4 PACA rights thereto.

5 2. Except as expressly set forth, nothing herein contained shall waive, alter or modify
6 the rights of the parties under the Order, and the segregated proceeds shall be subject to Plaintiffs'
7 PACA rights, if any, to the same extent and with the same validity and priority as such rights
8 attached to the machinery, fixtures, equipment and intellectual property itself.

9
10 DATED: February 22, 2008

MURRAY & MURRAY
A Professional Corporation

11
12 By: Robert A. Franklin

13
14 Attorneys Specially Appearing for Defendant
15 FRESH 'N HEALTHY, INC.

16 DATED: February , 2008

17 LOMBARDO & GILLES, LLP

18 By: _____

19 Attorneys for Plaintiffs
20 ASA FARMS, INC., and BRAGA RANCH

21 Comerica Bank hereby consents to entry of the foregoing order and agrees to be bound
22 thereby.

23 DATED: February , 2008

24 BUCHALTER NEMER
25 A Professional Corporation

26 By: _____

27 ROBERT E. IZMIRIAN
28 Attorneys for
COMERICA BANK

Case 5:08-cv-00122-JF Document 20 Filed 02/25/2008 Page 5 of 5

Feb-22-08 02:29pm From-Buchalter Nemer SF

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1 EXHIBIT A
23 Pending sales of assets of Fresh 'N Healthy, Inc.
45 1. To Ashman Company, substantially all of the equipment, including processing
6 equipment, farm equipment, pumps, irrigation pipes, forklifts, trucks, trailers and warehouse and
7 office furnishings located in Gilroy and El Centro, California, and trade names and labels
8 Gourmet Veg-Paq, Reda Verde, Ruby Ridge Farms, Truly Vegetarian, Salad Select and Tesoro
9 Farms for \$525,000; and10 2. To Ray Nava, substantially all of the equipment and vehicles located at Gilroy
11 Machine, for \$60,000.
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BN 1749449v1

EXHIBIT D

(Oceano's Complaint-In-Intervention)

Age Analysis by Customer/Ship Date
OCEANO PACKING COMPANY LLC

Ship Date	Order No.	Cust PO	Shiprsn	Pay Terms	Sale Terms	Hold	Invc Amt	Rept Amt	Balance	Days
FRESH 'N HEALTHY FARMS										
Jun 25, 2007	100425		F020	Phone: (800) 801-6600 EXT 22	OCEANO P 25 DAYS	FOB	19,832.77	7,350.28	12,482.49	201
Jun 26, 2007	100426			OCEANO P 25 DAYS	FOB	No	21,728.39	.00	21,728.39	200
Jun 30, 2007	100443			OCEANO P 25 DAYS	FOB	No	12,558.17	1,102.24	11,455.93	196
Jul 02, 2007	100429			OCEANO P 25 DAYS	FOB	No	18,348.43	.00	18,348.43	194
Nov 14, 2007	417	417		OCEANO P 25 DAYS	FOB	No	20,023.15	.00	20,023.15	59
Nov 19, 2007	423	423		OCEANO P 25 DAYS	FOB	No	17,089.00	.00	17,089.00	54
Total: FRESH 'N HEALTHY FARMS										
Grand Total:										
Number of Invoices: 6										
							109,579.91	8,452.52	101,127.39	
							109,579.91	8,452.52	101,127.39	

OCEANO PACKING COMPANY LLC
P.O. BOX 929
OCEANO CA 93475-0929

INVOICE

Invoice #: 100425
Invoice: Jun 25, 2007
Ship: Jun 25, 2007
Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS
P.O. BOX 2317
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS
1600 CIATION WAY
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB	Salesperson: OCEANO PACKING	Carrier:	
Order: Jun 25, 2007	Via: Truck	Trailer IIC:	
Cust PO:	Currency: USD	Broker:	St:
<hr/>			
Description	Quantity	UOM	Quantity
TOTE ORGANIC BABY	320	tote	5186 lb
GREEN ROMAINE TOTE F'N HEALTHY ORG 35'S	104	tote	1688 lb
MIZUNA TOTE F'N HEALTHY ORG 35'S	156	tote	2527 lb
RED OAK TOTE F'N HEALTHY ORG 35'S	80	tote	1296 lb
RED ROMAINE TOTE F'N HEALTHY ORG 35'S	80	tote	1296 lb
TANGO TOTE F'N HEALTHY ORG 35'S	200	tote	3240 lb
GREEN OAKS TOTE F'N HEALTHY ORG 35'S	208	tote	3370 lb
PRICE ADJUSTMENT			
INVOICE TOTAL:			18603
RECEIVING TICKET # 29384 (NO PO NUMBER)	1148		18603
<hr/>			
There will be a 1 1/2% per month (effective 18% per annum) service charge on all accounts 30 days past due.			
CDFA # 40-0749			
<hr/>			

Please return a copy of this invoice with your remittance - Thank You

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

OCEANO PACKING COMPANY LLC
P.O. BOX 929
OCEANO CA 93475-0929

INVOICE

Invoice #: 100426
Invoice: Jun 26, 2007
Ship: Jun 26, 2007
Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS
P.O. BOX 2317
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS
1600 CIATION WAY
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB
Order: Jun 26, 2007
Cust PO:

Salesperson: OCEANO PACKING
Via: Truck
Currency: USD

Carrier:
Trailer IIC:
Broker:
St:

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE ORGANIC BABY						
GREEN ROMAINE TOTE F'N HEALTHY ORG 35'S	520	tote	7878	lb	1.03	8,114.34
MIZUNA TOTE F'N HEALTHY ORG 35'S	104	tote	1576	lb	1.08	1,702.08
RED OAK TOTE F'N HEALTHY ORG 35'S	156	tote	2363	lb	1.08	2,552.04
TANGO TOTE F'N HEALTHY ORG 35'S	156	tote	2363	lb	1.08	2,552.04
RED ROMAINE TOTE F'N HEALTHY ORG 35'S	208	tote	3152	lb	1.08	2,552.04
REDINA TOTE F'N HEALTHY ORG 35'S	104	tote	1576	lb	1.08	3,404.16
PRICE ADJUSTMENT	104	tote	1576	lb	1.08	1,702.08
INVOICE TOTAL:			20484			.43
REC TICKET # 29389 (NO PO #) 6/26/07	1352		20484			21,728.39

There will be a 1 1/2% per month (effective 18% per annum) service charge on all accounts 30 days past due.
CDFA # 40-0749

Please return a copy of this invoice with your remittance - Thank You

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

OCEANO PACKING COMPANY LLC
P.O. BOX 929
OCEANO CA 93476-0929

INVOICE

Invoice #: 100443
Invoice: Jun 30, 2007
Ship: Jun 30, 2007
Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS
P.O. BOX 2317
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS
1600 CIATION WAY
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB
Order: Jun 30, 2007
Cust PO:

Salesperson: OCEANO PACKING
Via: Truck
Currency: USD

Carrier:
Trailer lic:
Broker:
St:

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE FIN HEALTHY ORG 35'S BABY	1044	tote	12192	lb	1.03	12,557.76
PRICE ADJUSTMENT			12192			41
INVOICE TOTAL:	1044		12192			12,568.17

Please return a copy of this invoice with your remittance - Thank You

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

PHEONIX TAYLOR
 OCEANO PACKING COMPANY LLC
 P.O. BOX 929
 OCEANO CA 93475-0929

INVOICE

Invoice #: 100429
 Invoice: Jul 02, 2007
 Ship: Jul 02, 2007
 Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS
 P.O. BOX 2317
 HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS
 1600 CIATION WAY
 HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB
 Order: Jul 02, 2007
 Cust PO:

Salesperson: OCEANO PACKING

Via: Truck

Currency: USD

Carrier:

Trailer lic:

St:

Broker:

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE FN HEALTHY ORG 35'S BABY	728	tote	9379	lb	1.08	9,660.37
GREEN ROMAINE TOTE FN HEALTHY ORG 35'S	104	tote	1345	lb	1.08	1,452.60
MIZUNA TOTE FN HEALTHY ORG 35'S	104	tote	1340	lb	1.08	1,447.20
TANGO TOTE FN HEALTHY ORG 35'S	208	tote	2680	lb	1.08	2,894.40
GREEN OAKS TOTE FN HEALTHY ORG 35'S	104	tote	1340	lb	1.08	1,447.20
ARUGULA TOTE FN HEALTHY ORG 35'S	104	tote	1340	lb	1.08	1,447.20
PRICE ADJUSTMENT			17424			
INVOICE TOTAL:		1352	17424			18,348.43
						-.54

There will be a 1 1/2 % per month (effective 18% per annum) service charge on all accounts 30 days past due.
 CDFA # 40-0749

Please return a copy of this invoice with your remittance - Thank You

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 408e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

OCEANO PACKING COMPANY LLC
P.O. BOX 929
OCEANO CA 93475-0929

INVOICE

Sold To: FRESH 'N HEALTHY FARMS
P.O. BOX 2317
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS
1600 CIATION WAY
HOLISTER CA 95024

Invoice #: 417
Invoice: Nov 14, 2007
Ship: Nov 14, 2007
Pay Terms: 25 DAYS

Sale Terms: FOB
Order: Nov 14, 2007
Cust PO: 417

Salesperson: OCEANO PACKING
Via: Truck
Currency: USD

Carrier: PETTERVILLE
Trailer lic: 9D19774
Broker:

Page 1 of 1

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE ORGANIC 40'S BABY	480	tote	8570	lb	1.15	9,855.50
GREEN ROMAINE TOTE ORGANIC 40'S	120	tote	1835	lb	1.15	2,110.25
LOLLA ROSSA TOTE ORGANIC 40'S	40	tote	520	lb	1.15	598.00
MIZUNA TOTE ORGANIC 40'S	120	tote	1575	lb	1.15	1,811.25
RED ROMAINE TOTE ORGANIC 40'S	80	tote	832	lb	1.15	956.80
REDINA TOTE ORGANIC 40'S	80	tote	1159	lb	1.15	1,332.85
RED CHARD TOTE ORGANIC 40'S	120	tote	1714	lb	1.15	1,971.10
TANGO TOTE ORGANIC 40'S	80	tote	1186	lb	1.15	1,363.90
TEMPERATURE RECORDER					23.50	23.50
INVOICE TOTAL:			1120			20,023.15
CDFA # 40-0749						

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OCEANO PACKING COMPANY LLC
P.O. BOX 829
OCEANO CA 93475-0929

INVOICE

Invoice #: 423
Invoice: Nov 19, 2007
Ship: Nov 19, 2007
Pay Terms: 26 DAYS

Sold To: FRESH 'N HEALTHY FARMS
P.O. BOX 2317
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS
1600 CIATION WAY
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB
Order: Nov 19, 2007
Cust PO: 423

Salesperson: OCEANO PACKING
Via: Truck
Currency: USD

Carrier:
Trailer lic:
Broker:
St:

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE ORGANIC BABY	480	tote	8916	lb	1.15	10,253.40
LOLLA ROSSA TOTE ORGANIC 40'S	80	tote	1486	lb	1.15	1,708.90
RED ROMAINE TOTE ORGANIC 40'S	80	tote	1486	lb	1.15	1,708.90
REDINA TOTE ORGANIC 40'S	80	tote	1486	lb	1.15	1,708.90
RED CHARD TOTE ORGANIC 40'S	80	tote	1486	lb	1.15	1,708.90
INVOICE TOTAL:	800		14860			17,089.00
CDFA 40-0749						

There will be a 1 1/2% per month (effective 18% per annum) service charge on all accounts 30 days past due.

Please return a copy of this invoice with your remittance - Thank You

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499b(o)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.